

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

NO. CR. 89-106 LKK

Respondent,

v.

O R D E R

RICHARD J. AICHELE,

Movant.

_____/

On July 26, 2010, Aichele filed a petition for writ of error audita querela seeking retroactive application of several Supreme Court decisions. On August 12, 2010, the court denied the petition citing several Ninth Circuit decisions for the proposition that the Supreme Court cases are not retroactive. Aichele subsequently appealed the court's denial of the petition to the Ninth Circuit. On January 27, 2011, the Ninth Circuit found that the appeal "appears to arise under 28 U.S.C. § 2255," and, thus, "remanded the case to the district court for the limited purpose of granting or denying a certificate of appealability."

1 The court has reviewed the record and declines to issue a
2 certificate of appealability. The merits of Aichele's claims are
3 not debatable among jurists of reason because the Ninth Circuit has
4 determined that the Supreme Court decisions do not apply
5 retroactively.

6 IT IS SO ORDERED.

7 DATED: January 28, 2011.

8
9
10 

11 LAWRENCE K. KARLTON
12 SENIOR JUDGE
13 UNITED STATES DISTRICT COURT
14
15
16
17
18
19
20
21
22
23
24
25
26